

January 27, 2015

Kent Hoffman
Justin Abernathy
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, Utah 84101-1345

Re.: November 2015 Federal Oil and Gas Lease Sale

Dear Mr. Hoffman and Mr. Abernathy:

We represent a number of clients who are actively engaged in environmentally responsible exploration and production of oil and natural gas resources in the Uinta Basin, Utah. Our clients and others have previously submitted a number of expressions of interest for oil and gas lease parcels located in the Vernal Field Office ("VFO"). Specifically, in December 2013, our clients nominated a number of parcels for the November 2014 lease sale. However, many of these parcels were not analyzed in the lease sale National Environmental Policy Act ("NEPA") Environmental Analysis ("EA") and were consequently not offered at the November 2014 lease sale.

Introduction

Under existing BLM regulations and internal policy, BLM is encouraged to consider proposed lease parcels contained in previously-submitted expressions of interest when deciding which parcels will be analyzed for future oil and gas lease sales. BLM Manual 3120.1.11-12 ("Each state office must offer for oral auction the available lands contained in an expression of interest or noncompetitive offer which is filed in accordance with 43 CFR 3110.1(a)(1)."); BLM IM 2004-110.

Rather than simply ask the BLM to consider *all* of the previously nominated acreage, we have carefully studied the VFO Resource Management Plan ("RMP") and relevant public land orders and related authority and identified the following thirty-one (31) parcels, all located in Uintah County, as areas on which we would like BLM to focus when compiling the parcel list for the November 2015 lease sale. Each parcel was selected because it conforms to the requirements for leasing contained in the VFO RMP and contains minimal resource conflicts. In each instance, the proposed parcel is located in close proximity to producing oil and gas wells

impediments to offering these parcels at the upcoming November 2015 sale. Each parcel has been carefully chosen to eliminate or, to the extent possible, minimize resource conflicts. For example, none of these parcels are located on split estate lands, embrace Areas of Critical Environmental Concern ("ACECs"), Wilderness Study Areas ("WSAs"), lands with Wilderness Characteristics, Wild and Scenic Rivers ("WSRs"), Special Management Areas ("SMAs"), or contain critical habitat for any species listed under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1599.

The remaining eight (8) parcels identified above are located in the Ouray National Wildlife Refuge (WSMT 10-16, 20) and are thus not analyzed in the VFO RMP. However, as explained in more detail below, these lands may be leased under 43 CFR § 3101.1.5-1.

We ask that you please include the above identified parcels in the Notice of Competitive Lease Sale ("NCLS") for the November 2015 lease sale and accompanying NEPA analysis.

1. Conformity with VFO RMP

Each of the twenty-three parcels identified above that are located outside of the Ouray National Wildlife Refuge are "open" for leasing under the 2008 VFO RMP. As outlined by the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701(a)(12), BLM's governing statute, oil and gas leasing is a principal use of public lands. Indeed, FLPMA's policy statement clearly sets out that it is the policy of the United States that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . including implementation of the Mining and Minerals Policy Act of 1970," an Act which, as to public lands, calls on the federal government to "foster and encourage private enterprise in . . . the development of domestic mineral resources." 30 U.S.C. § 21a.

Congress reaffirmed this commitment to responsible energy development on public lands with the passage of the Energy Policy Act of 2005, 42 U.S.C. §§ 15921-15928, which aimed to streamline the oil and gas permitting process on federal lands. Accordingly, Congress has made clear numerous times that BLM must take its multiple use mandate seriously and, when appropriate under the governing land use plan, prioritize energy development on public lands.

The FLPMA RMP is a comprehensive statement of land management priorities that provides a "rational, consistently applied set of regulations and procedures." 43 C.F.R. § 1601.0-2. The RMP determines whether an area is open for oil and gas leasing and establishes the baseline protections necessary for resource conservation. Under section 202 of FLPMA, 43 U.S.C. § 1711, management decisions regarding lease parcel offerings *must* be guided by the governing RMP.

We recognize that the Secretary retains considerable discretion in determining which lands to offer for competitive lease. However, as set forth in FLPMA, the RMP *must* govern these leasing decisions, 43 U.S.C. § 1711, and BLM is not free to defer lands from leasing on an *ad hoc* basis. Under FLPMA, management decisions regarding land use planning—including a determination as to what lands are open to oil and gas leasing—is a public process that must be

parcels. Additionally, also within three miles of the proposed parcels, forty-nine (49) wells have approved or pending state APDs.³

Given that there is no apparent conflict preventing the offering of parcels WSMT 1-3—and their close proximity to significant oil and gas development—it is unclear why BLM has continually declined to offer these lands for lease. We ask that BLM please include these lands in the NCLS for the November 2015 sale.

3. *Parcels WSMT 17-19 and 21-31*

As with parcels WSMT 1-3, there are no significant barriers to leasing parcels WSMT 17-19 and 21 (priority number 2) and parcels WSMT 22-31 (priority number 3). Each of these parcels is “open” for leasing under the 2008 VFO RMP and do not present any significant resource conflicts. None of these parcels contain ACECs, WSRs, Wilderness Characteristics, WSAs or SMAs, and each is outside of the Vernal Master Leasing Plan area (discussed below).

Each of these parcels is also in close proximity to producing and planned oil and gas wells, enabling minimal surface disturbance when developing the new leasehold. For example, parcels WSMT 17-19 are located very close to, and in some cases within, the established Horseshoe Bend and Brennan Bottom fields. Similarly, parcel WSMT 22 is located in the Devil’s Playground field, adjacent to the Big Valley field. Proximity to producing fields and related infrastructure is an important factor, as use of existing infrastructure could be considered if development were to occur on adjacent acreage.

We note that portions of parcels WSMT 8-9 and 17-18 are located in habitat for the Horseshoe milkvetch, *Astragalus equisolensis*. While the milkvetch is not listed as threatened or endangered under the ESA, it is a State of Utah sensitive species. A Conservation Plan has been prepared for the milkvetch, *see* 2008 VFO RMP SSS-2, and conservation measures developed for sensitive species will be implemented as part of committed mitigation measures on new oil and gas leases, 2008 VFO RMP SSS-10. Thus, all leases to parcels WSMT 8-9 and 17-18 will include appropriate mitigation measures and best management practices aimed at preventing disruption to milkvetch populations and habitat. Therefore, the existence of milkvetch habitat in portions of these parcels should not prevent the offering of these parcels for lease.

Similarly, small portions of parcels WSMT 12, 15, 16, and 20 contain suitable habitat for the Uinta Basin hookless cactus, *sclerocactus glaucus*. The hookless cactus is listed as threatened under the ESA; however, the Fish and Wildlife Services have yet to designate critical habitat for the species. Nonetheless, the 2008 VFO RMP requires that Lease Notices L.1.6 and L.2.4 be included in leases for all parcels containing both suitable and potential habitat for the hookless cactus. Lease Notice L.1.6 and L.2.4 set forth a number of avoidance and minimization measures with which the lessee must comply in order to ensure that oil and gas development activities are in compliance with the ESA and do not cause harm to the species. Compliance with these lease notices, the very strict dictates of the ESA itself, and any site-specific mitigation

³ See http://oilgas.ogm.utah.gov/Data_Center/LiveData_Search/well_data_lookup.cfm.

5. Parcels within the Ouray National Wildlife Refuge

Parcels WSMT 10-16 and 20 are located within the interior borders of the Ouray National Wildlife Refuge (“Refuge”) and, as such, are not addressed by the VFO RMP. The minerals underlying the Refuge (and, in fact, some of the surface) is made up of a patchwork of ownership, with some minerals belonging to the public domain under BLM management, others belonging to the Uintah and Ouray Reservation, and still others in private ownership.

Further complicating matters is the fact that the Refuge was established by two separate Public Land Orders. First, via Public Land Order 2730 (“PLO 2730”), 27 Fed. Reg. 6938 (July 17, 1962), 3,937.8 acres of land were withdrawn for the creation of the Refuge. This withdrawal specifically stated that, while subject to valid existing rights, the lands included in the withdrawal are closed to all forms of appropriation. Thereafter, via Public Land Order 3999 (“PLO 3999”), 31 Fed. Reg. 6907 (May 3, 1966), an additional 2,158.96 acres were withdrawn and added to the Refuge. However, in contrast to PLO 2730, PLO 3999 specifically states that the additionally withdrawn lands “are withdrawn from all forms of appropriation under the public laws, including the mining laws, but not from leasing under the mineral leasing laws.” (Emphasis added.) Thus, as to those portions of the Refuge set aside under PLO 3999, these lands may be leased under the Mineral Leasing Act.

Current departmental policy allows for development of federal minerals underlying National Wildlife Refuge System lands in certain circumstances, including situations where wells on neighboring lands are draining and capturing federally owned oil and gas without compensating the federal government. 43 CFR § 3101.1.5-1.

According to the Utah Division of Oil, Gas and Mining online records, there are presently eighteen (18) producing oil and gas wells within the Refuge and forty-two (42) APDs have been approved by the State of Utah, but the wells have not yet been spudded. Additionally, there are numerous other producing wells located on federal, tribal and fee lands directly outside of the Refuge’s borders. Therefore, the circumstances described in 43 CFR § 3101.1.5-1 are met in this instance and we heartily urge BLM to lease the federal minerals underlying the Refuge that are available for leasing under PLO 3999.

We are mindful of the fact that the Refuge was established for the purpose of providing a safe haven for migratory birds and additional wildlife species. We also understand that part-and-parcel of providing this safe haven is maintaining a healthy and vibrant habitat within the Refuge. This healthy habitat can coexist with oil and gas development, as demonstrated by the large number of producing wells in close proximity to the Refuge, and can be adequately addressed through specific lease stipulations and site specific mitigation measures at the APD stage. Thus, we ask that you seriously consider leasing certain lands within the Refuge, including parcels WSMT 10-16 and 20.